

**United States Department of Labor
Employees' Compensation Appeals Board**

S.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Easton, MD, Employer**

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**Docket No. 17-1876
Issued: January 24, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 5, 2017 appellant filed a timely appeal from an April 12, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from the most recent merit decision dated February 7, 2017, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.²

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted new evidence on appeal. As the Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision, the Board is precluded from reviewing this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1). *J.W.*, Docket No. 17-1366 (issued October 26, 2017).

FACTUAL HISTORY

On December 10, 2014 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2014 she was involved in a work-related motor vehicle incident which resulted in abrasions, a broken rib, and a black eye. Appellant stopped work on December 6, 2014.

By decision dated February 2, 2015, OWCP accepted appellant's claim for lumbar sprain, contusions of the right elbow and forearm, contusions of the right chest wall, and a right black eye. Medical benefits were authorized and appellant received wage-loss compensation on the supplemental rolls as of January 21, 2015. On October 8, 2015 OWCP accepted a claim for recurrence of disability (Form CA-2a) effective September 8, 2015. By decision dated May 20, 2016, it accepted additional conditions of wedge compression fracture of the thoracic vertebra and flail chest. Appellant received wage-loss compensation on the periodic rolls as of July 24, 2016.

Following the establishment of a conflict in medical opinion as to appellant's disability status, in an impartial medical evaluation report dated September 30, 2016, Dr. Mohammed H. Zamani, a Board-certified orthopedic surgeon, opined that appellant was capable of working without restrictions and that no further medical treatment was necessary.

On October 19, 2016 OWCP proposed to terminate appellant's entitlement to wage-loss compensation and medical benefits. It found that the special weight of medical evidence rested with Dr. Zamani. On February 7, 2017 OWCP finalized its termination of and wage-loss compensation and medical benefits effective March 5, 2017.

By form dated March 20, 2017, appellant requested an oral hearing before an OWCP hearing representative. The envelope containing the form was postmarked March 22, 2017 and was received by OWCP on March 27, 2017.

By decision dated April 12, 2017, OWCP's Branch of Hearings and Review denied appellant's hearing request as untimely filed. OWCP's hearing representative noted that OWCP had issued its decision on February 7, 2017, while appellant's hearing request was postmarked March 22, 2017, more than 30 days after OWCP's decision. She found that appellant was not entitled to a hearing as a matter of right, as the request was submitted more than 30 days after OWCP's decision. The hearing representative also considered whether to grant appellant a discretionary hearing, but determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP.

LEGAL PRECEDENT

A claimant may obtain a hearing from a final adverse OWCP decision by writing to the address specified in the decision.³ The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request

³ 20 C.F.R. § 10.616(a).

(whether or not it was granted) on the same decision. If the request is not made within 30 days, a claimant is not entitled to a hearing as a matter of right. However, the Branch of Hearings and Review, in exercise of its discretion, may either grant or deny a hearing.⁴ Its procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).⁵

ANALYSIS

The issue on appeal is solely whether appellant was entitled, as a matter of right, to an oral hearing before an OWCP hearing representative, or whether OWCP's Branch of Hearings and Review abused its discretionary authority in denying appellant's request for a hearing.

OWCP issued its last decision on February 7, 2017. The regulations provide that "[t]he hearing request must be sent within 30 days [...] of the date of the decision for which a hearing is sought." Because appellant's request postmarked March 22, 2017 was untimely and she was not entitled to a review of the written record as a matter of right.

Although appellant's request for hearing was untimely, OWCP has the discretionary authority to grant the request and it must exercise such discretion.⁶ OWCP's hearing representative exercised her discretion, but denied appellant's hearing request because she found that the issue of termination could be equally well addressed by a request for reconsideration before OWCP. The Board finds that the hearing representative properly exercised her discretionary authority in denying appellant's request for a hearing.⁷ The only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.⁸ In this case, the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for a hearing. Accordingly, the Board finds that OWCP properly denied appellant's hearing request.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing before an OWCP hearing representative as untimely filed pursuant to 5 U.S.C. § 8124.

⁴ 5 U.S.C. §§ 8124(b) (1) and 8128(a); *Hubert Jones Jr.*, 57 ECAB 467, 472-73 (2006); *Herbert C. Holley*, 33 ECAB 140 (1981).

⁵ See *R.T.*, Docket No. 08-0408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

⁶ *R.V.*, Docket No. 17-1286 (issued December 5, 2017).

⁷ *Mary B. Moss*, 40 ECAB 640, 647 (1989). Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts. See *André Thyratron*, 54 ECAB 257, 261 (2002).

⁸ *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board